

127 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-20051-2023

Date of decision: 12.09.2023

Pardeep and others

... Petitioners

Versus

Financial Commissioner and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Kartar Singh Malik-I, Advocate, for the petitioners.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for quashing the impugned order dated 30.06.2023 passed by respondent No.1 (Annexure P-15), wherein, the order of Assistant Collector Ist Grade, Rohtak, has been set aside by respondent No.1 and remanded the case to the Assistant Collector Ist Grade, Rohtak and impugned order dated 11.04.2012 passed by respondent No.2 (Annexure P-10) and order dated 31.03.2010 (Annexure P-9) passed by learned Collector, which was without jurisdiction and all the impugned orders are beyond the facts and circumstance of the case and law, based on biased, arbitrary manner and these impugned orders are non-speaking and liable to be set aside.

As contended by learned counsel for the petitioners, father of the petitioners filed an application dated 04.06.2007 for partition of the land in dispute. He has submitted that the partition proceedings were to be conducted according to their possession and the mode of partition was made final on 18.11.2018 without any objections. It is submitted that the learned Assistant Collector made the partition according to their possession, passage and *khaal* were provided to all the co-sharers. He submits that *naksha Keh* was prepared on 17.12.2008 and no objections were filed to the same. Thereafter, *Sanad*

Takseem was prepared and was issued as per mode of partition on 30.04.2009.

It is submitted that after issuance of *Sanad Takseem* on 30.04.2009, respondent No.4-Ishwar filed an appeal before the learned District Revenue Officer, Rohtak which was accepted by setting aside all the proceedings and the case was remanded to the Assistant Collector Ist Grade/Naib Tehsildar, Rohtak vide order dated 31.03.2010. He submits that father of the petitioners filed an appeal against order dated 31.03.2010 before the Commissioner, Rohtak Division, Rohtak on 27.08.2010 and the learned Commissioner partially modified the order dated 31.03.2010 and remanded the case to the Assistant Collector with direction that *naksha khe* be prepared again vide order dated 11.04.2012. It is submitted that the order passed by the Commissioner is without jurisdiction as the *Sanad Takseem* was already issued. He submits that both the orders of the Collector, Rohtak and Commissioner, Rohtak Division, Rohtak were challenged by the father of the petitioners before the Financial Commissioner and the learned Financial Commissioner set aside the impugned orders dated 31.03.2010 and 11.04.2012, vide order dated 15.05.2015. He has submitted that the Assistant Collector granted the possession and completed all the partition proceedings in the case. He submits that respondent No.4-Ishwar Singh and others did not complied with the order dated 15.05.2015 passed by the Financial Commissioner as they did not file petition before the Financial Commissioner rather they filed CWP-26198-2018 titled as Ishwar Singh and others vs. Rajinder (since deceased) and others before this Court after a lapse of more than 3 years and 4 months, however, the same was allowed to be dismissed as withdrawn with liberty to raise their grievances before the Financial Commissioner vide order dated 13.11.2018. Thereafter, the private respondents approached the Financial Commissioner on 11.03.2019 by way of

filing ROR No.324 of 2019. It is submitted that the Financial Commissioner passed the impugned order dated 30.06.2023 without having any jurisdiction as the ROR filed was time barred. He submits that the petitioners are in continuous possession of the land as the partition proceedings had been carried out according to the mode of partition and accordingly the mutation and Jamabandi were sanctioned and prepared by the Revenue authorities. It is submitted that the impugned order being totally against the facts and circumstances of the case and the law settled, deserves to be set aside.

Heard.

After hearing learned counsel for the petitioner and perusing the record, it is apparent that the partition proceedings were initiated at the behest of father of the petitioners. As submitted before this Court, the partition proceedings were carried out according to the mode of partition, however, the same were challenged by respondent No.4-Ishwar Singh. The proceedings were set aside and the case was remanded to the Assistant Collector Ist Grade vide order dated 31.03.2010. Thereafter, the order dated 31.03.2010 was modified and the case was remanded to the Assistant Collector vide order dated 11.04.2012. Both the orders dated 30.03.2010 and 11.04.2014 were set aside by the Financial Commissioner vide order dated 15.05.2015. However, the private respondents instead of approaching the Financial Commissioner, filed writ petition before this Court, which was allowed to be dismissed as withdrawn with liberty to them to approach the Financial Commissioner. Thereafter, the respondents filed ROR before the Financial Commissioner, which was allowed vide order dated 30.06.2023. The petitioners before this Court are against the order dated 30.06.2023 passed by the Financial Commissioner. As is evident from the impugned order and the record, the grievance of the private-

respondent as appreciated by the Financial Commissioner was that the partition proceedings had not been carried out as per the value of the land which resulted in excess fragmentation of land and avoidable waste due to excess *rasta*. The co-owners were spread across the generations, thus, it was directed that the partition proceedings be carried out in order to prevent the fragmentation and waste of land. As the partition proceedings caused serious prejudice to the co-sharer, it was incumbent to remove the same, for which fresh proceedings keeping in view the prejudice caused to the parties, have been directed to be carried out. In the considered opinion of this Court, fresh proceedings have been directed to be initiated to meet the ends of justice. Thus, this Court finds no infirmity in the impugned orders passed. Resultantly, the present petition being devoid of any merit, is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

12.09.2023
sharmila

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No